

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

* * * * *

CLAIMANTS: Kenneth G. Horton; Vicki L. Horton

NOTICE OF INTENT TO APPEAR: Kenneth G. Horton;
Vicki L. Horton

CASE 76D-0474-R-2023
76D 104718-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claim 76D 104718-00 appeared in the Preliminary Decree for the Kootenai River Basin (Basin 76D) issued May 6, 2021. This claim received an issue

remark. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination or by Water Court order. Claims examination confirms the historical use of water right claims and identifies issues with claims. This claim also received a Notice of Intent to Appear filed by Claimants.

Further proceedings are not required to resolve the issue remark on this claim. However, for organizational purposes, the claim is consolidated into Water Court Case 76D-0474-R-2023.

FINDINGS OF FACT

1. Claim 76D 104718-00 appeared with the following issue remark:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

2. Kenneth G. Horton and Vicki L. Horton each filed a Notice of Intent to Appear form with the Court on May 19, 2022. Neither party requested any changes to the claim. Both parties are owners of the claim.

3. The issue remark is a notice remark giving notice to the basin and the owners that the DNRC modified the ditch name of the claimed water right. The issue remark states that if no objections were filed the remark could be removed. The remark has served its purpose.

4. This claim did not receive any objections.
5. There do not appear to be any issues to address.
6. The issue remark should be removed.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

CONCLUSION OF LAW

1. The evidence in the record provides the Court with a sufficient basis to resolve and remove the issue remark from the above-captioned claim.

2. The NOIA is resolved as there are no substantive issues to which a party can appear and there are no substantive issues to address.

RECOMMENDATIONS

The issue remark should be removed from the above-captioned claim. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Kenneth G. Horton
Vicki L. Horton
332 Mud Creek Rd
Eureka, MT 59917

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 104718-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: VICKI L HORTON
332 MUD CREEK RD
EUREKA, MT 59917 9615

KENNETH G HORTON
332 MUD CREEK RD
EUREKA, MT 59917

Priority Date: JULY 1, 1946

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 49.37 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

Maximum Acres: 3.00

Source Name: MUD CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENW	10	35N	26W	LINCOLN

Period of Diversion: MAY 15 TO OCTOBER 1

Diversion Means: HEADGATE

Ditch Name: OSLER DITCH

Period of Use: MAY 15 TO OCTOBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3.00		NWNENW	10	35N	26W	LINCOLN

Total: 3.00